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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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EXAMINER

ARYANPOUR, MITRA

ART UNIT PAPER NUMBER

3711

DATE MAILED: 11/09/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/689,724

Applicant(s)

SOCCI, ROGER D.

Examiner

Mitra Aryanpour

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 22 October 2003.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-16 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-16 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 22 October 2003 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____.
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____.

DETAILED ACTION

Drawings

1. The drawings are objected to under 37 CFR 1.83(a). The drawings must show every feature of the invention specified in the claims. Therefore, the *target member is yieldingly biased within the pocket* must be shown or the feature(s) canceled from the claim(s). No new matter should be entered.

Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. The figure or figure number of an amended drawing should not be labeled as "amended." If a drawing figure is to be canceled, the appropriate figure must be removed from the replacement sheet, and where necessary, the remaining figures must be renumbered and appropriate changes made to the brief description of the several views of the drawings for consistency. Additional replacement sheets may be necessary to show the renumbering of the remaining figures. The replacement sheet(s) should be labeled "Replacement Sheet" in the page header (as per 37 CFR 1.84(c)) so as not to obstruct any portion of the drawing figures. If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

Specification

2. The disclosure is objected to because of the following informalities: on page 1, line 10, unclear what is meant by "this line of the ball"?; on page 3, line 10, "is" should be changed to --

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in--; on page 4, line 8, --the-- should be inserted before "torso"; on page 4, line 11, --a-- should be inserted before "buckle"; on page 4, line 17, it appears that for clarity the word --target-- should be inserted before "member"; on page 5, line 6, "an" should be changed to --a-- after "defines"; on page 7, line 2, "a" should be changed to --an-- before "audible". Appropriate correction is required for the above objections.

Claim Rejections - 35 USC § 102

3. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

4. Claims 1-7, 9-15 are rejected under 35 U.S.C. 102(b) as being anticipated by Kiser (5,375,836).

Regarding claim 1, Kiser discloses a baseball training device for use in improving batting skills, the device comprising an elongated member (belt 7a) of at least a length to extend about the torso of a wearer and form a loop, and a target member (the combination of adjustable arm positioner 5 and vertical arm support 6a and 135 degree arm support guide 6b) slidably secured to the elongated member (belt 7a) and adapted to engage an upper arm of a wearer upon proper movement of the arm of the wearer during a batting swing.

Regarding claim 2, Kiser shows the elongated member (belt 7a) includes a pocket (the end portion of 3a; best seen in figure 2).

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Regarding claim 3, Kiser shows the target member comprises an elongated stem (adjustable arm positioner 5) adapted to be received in the pocket and a target (combination of vertical arm support 6a and 135 degree arm support guide 6b) affixed to the elongated stem.

Regarding claim 4, Kiser shows the target member is yieldingly biased within the pocket (see figures 2, 5 and 7; the adjustable arm positioner 5 is received within the angled main body 3a and secured with the adjusting pin 4a; upon impact on the target, the adjustable arm positioner 5 will have some degree of bias within the angled main body).

Regarding claim 5, Kiser shows the elongated stem has a slight curvature (the broadest reasonable interpretation of curvature would include the curved or cylindrical shape of the elongated stem) along its length so as to conform to the shape of the pocket.

Regarding claim 6, note the rejection of claim 3.

Regarding claim 7, note the rejection of claim 4.

Regarding claim 9, note the rejection of claim 1. Additionally, Kiser shows the elongated member has two distal ends, and a fastener for engaging the two distal ends of the elongated member.

Regarding claim 10, note the rejection of claim 2.

Regarding claim 11, note the rejection of claim 3.

Regarding claim 12, note the rejection of claim 4.

Regarding claim 13, note the rejection of claim 5.

Regarding claim 14, note the rejection of claim 3.

Regarding claim 15, note the rejection of claim 4.

Claim Rejections - 35 USC § 103

5. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

6. Claims 8 and 16 are rejected under 35 U.S.C. 103(a) as being unpatentable over Kiser (5,375,836).

Regarding claim 8, Kiser as disclosed above does not expressly disclose the elongated member having a shoulder strap. At the time the invention was made, it would have been an obvious matter of design choice to a person of ordinary skill in the art to include shoulder straps, because Applicant has not disclosed that including shoulder straps provides an advantage, is used for a particular purpose, or solves a stated problem. One of ordinary skill in the art, furthermore, would have expected Applicant's invention to perform equally well with either the elongated member taught by Kiser or the claimed elongated member with straps because both elongated members perform the same function of securing a target around the waist of a user. Therefore, it would have been an obvious matter of design choice to modify Kiser to obtain the invention as specified in claim 8.

Regarding claim 16, note the rejection of claim 8.

Conclusion


Any inquiry concerning this communication or earlier communications from the examiner should be directed to Mitra Aryanpour whose telephone number is 703-308-3550. The examiner can normally be reached on Monday - Friday 9:00 to 5:30.

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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Greg Vidovich can be reached on 703-308-1513. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

MA
29 October 2004


MITRA ARYANPOUR
PATENT EXAMINER